

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CARL ASHLEY,

Plaintiff,

Case Number: 10-10512

v.

HONORABLE AVERN COHN

GERALDINE WILSON, DENNIS CRANE,  
and KATHERINE CORRIGAN,

Defendants.

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**ORDER**  
**DENYING PLAINTIFF'S MOTION FOR ORDER CERTIFYING THAT APPEAL IS**  
**TAKEN IN GOOD FAITH (Doc. No. 11)**  
**AND**  
**DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL (Doc. No. 13)**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff Carl Lee Ashley, proceeding pro se and in forma pauperis, filed a complaint claiming defendants violated his constitutional rights. Specifically, plaintiff claimed that defendants violated his right to due process, his right to receive mail, and his state right to a fair hearing when he was not allowed to receive a 2010 calendar which came to him through the mail from an approved vendor. The case was referred to a magistrate judge for all pre-trial proceedings. The magistrate judge issued a report and recommendation (MJRR) recommending that the complaint be dismissed under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A for failure to state a claim upon which relief may be granted. Plaintiff objected to the MJRR and filed a motion to file a supplemental complaint. The Court overruled plaintiff's objections, adopted the MJRR, denied plaintiff's motion to amend, and

dismissed the case. See Order filed March 25, 2010. (Doc. No. 9). Plaintiff filed a notice of appeal. (Doc. No. 10). Plaintiff also filed a Motion for Order Certifying that Appeal is Taken in Good Faith (Doc. No. 11) together with an application to proceed without payment of the filing fee (Doc. No. 12), and a Motion for Appointment of Counsel (Doc No. 13). For the reasons that follow, the motions will be denied.

## II

As to plaintiff's motion for order certifying that an appeal be taken in good faith, the Court of Appeals for the Sixth Circuit requires that district courts in the circuit determine, in all cases where the appellant seeks to proceed in forma pauperis, whether the appeal is frivolous. Floyd v. United States Postal Serv., 105 F.3d 274, 277 (6th Cir.1997). Twenty-eight U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. Id. It would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the defendants, but has sufficient merit to support an appeal in forma pauperis. See Williams v. Kullman, 722 F.2d 1048, 1050 n. 1 (2d Cir.1983). The same considerations that lead the Court to dismiss this case also compel the conclusion that an appeal would not be taken in good faith. Accordingly, plaintiff's motion is DENIED. It is CERTIFIED, under 28 U.S.C. § 1915(a)(3), that any appeal in this matter by plaintiff would not be taken in good faith and Plaintiff may not proceed on appeal in forma pauperis.

As to plaintiff's motion for appointment of counsel on appeal, on April 29, 2010, plaintiff filed a notice of appeal. Once a notice of appeal has been filed, the Court loses jurisdiction over the case. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); Workman v. Tate, 958 F.2d 164, 167 (6th Cir. 1992). The notice of appeal divests the Court of jurisdiction to consider his motion for the appointment of appellate counsel. Wagner v. Smith, 06-10514, 2007 WL 3124659, at \*2 (E.D. Mich. Oct. 25, 2007) (citing Glick v. U.S. Civil Com'n, 567 F. Supp. 1483, 1490 (N.D. Ill.1983); Brinton v. Gaffney, 560 F. Supp. 28, 29-30 (E.D. Pa.1983); Grizzell v. Tennessee, 601 F. Supp. 230, 232 (M.D. Tenn.1984)). Therefore, only the Sixth Circuit has the authority to appoint counsel to represent plaintiff on appeal. Accordingly, plaintiff's motion is DENIED.

SO ORDERED.

S/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: May 13, 2010

I hereby certify that a copy of the foregoing document was mailed to Carl Ashley, 136985, Saginaw Correctional Facility, 9625 Pierce Road, Freeland, MI 48623 and the attorneys of record on this date, May 13, 2010, by electronic and/or ordinary mail.

S/Julie Owens  
Case Manager, (313) 234-5160